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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/664,819

09/17/2003

Andrzej Strak

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26389 7590 02/09/2007
CHRISTENSEN, O'CONNOR, JOHNSON, KINDNESS, PLLC
1420 FIFTH AVENUE
SUITE 2800
SEATTLE, WA 98101-2347

EXAMINER

PADEN, CAROLYN A

ART UNIT

PAPER NUMBER

1761

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
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3 MONTHS

02/09/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary

Application No.

10/664,819

Applicant(s)

STRAK ET AL.

Examiner

Carolyn A. Paden

Art Unit

1761

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 18 December 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-15 and 18-37 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-15, 18-37 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on December 18, 2006 has been entered.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-4, 7-12 and 18-37 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sasaki (5,198,261).

Sasaki discloses fibrous fish or shellfish. At example 4, edible Pollack is exposed to water and dehydrated. Then 5 parts sorbitol and 0.2 parts phosphate is added. Then the mixture is cut to obtain surimi. Then the surimi is added to a combination of salt and starch. After kneading the mixture in a silent cutter, the resulting sol was extruded and processed with heating at 170C. The claims appear to differ from Sasaki in the recitation

of the amount of phosphate and/or salt that are in the final product. But one of ordinary skill in the art would not expect the fish of Sasaki to contain more than 1 wt% salt or phosphate because the starting fish was not salted and 73% water was added to the fish prior to cooking. It is appreciated that the orientation of the seafood portions are not mentioned but no unobvious or unexpected result is seen from this feature. It is appreciated that processing the fish under refrigerated temperature is not mentioned but it is well known in the art to process seafood under refrigeration to extend its shelf-life. It is also appreciated that the size and shape of the seafood pieces is not mentioned but to prepare portions of seafood at a consumable size would have been an obvious way to prepare the seafood of example 4. It is also appreciated that salmon is not mentioned, in particular but to select one fish source over the other would have been an obvious way to process to utilize available seafood sources.

Claims 1, 2, 4-15 and 18-30, 32-37 rejected under 35 U.S.C. 103(a) as being unpatentable over Hanson (4,579,741).

Hanson discloses fabricated seafood. Example 2 discloses fabricated seafood made from shrimp and surimi. Fraction A is made from shrimp that is chopped with water drained of water and treated with salt

and sodium tripolyphosphate. Fraction B is then added to Fraction A. Fraction B is a combination of surimi that is frozen and unfrozen, starch other ingredients, salt and sodium tripolyphosphate. The salt and phosphate components appear to fall within the range of the claims. Then the fish containing Fraction A and Fraction B are extruded and steamed. Fraction B appears to coat Fraction A during the manufacture of the fish product. The claims appear to differ from Hanson in the inclusion of salmon in the product but to select one source over the other would have been an obvious way to utilize available seafood. It is appreciated that the size and shape of the seafood is not mentioned but no unobvious or unexpected result is seen from this feature. It is also appreciated that the cooking conditions are different from that disclosed in Hanson but to cook fish to create an edible product would have been within the determination of one of ordinary skill in the food art who does not like raw seafood.

Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over Hanson or Sasaki as applied to the claims above, and further in view of Chang (4,411,917).

The claims appear to differ from Hanson or Sasaki in the recitation of the use of tetrasodium pyrophosphate in fish. Chang teaches that

tetrasodium pyrophosphate is well known in the art as a phosphate source for use in fish. It would have been obvious to one of ordinary skill in the art to use the phosphate of Chang in the fish of Hanson or Sasaki as an obvious phosphate source.

No claim is allowed. The rejection of the claims over Kelly in view of Shenouda has been withdrawn for the reasons argued by applicant and as a result of the amendment to the claims, filed November 6, 2006.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Carolyn A Paden whose telephone number is (571) 272-1403. The examiner can normally be reached on Monday to Friday from 7 am to 3:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano, can be reached on (571) 272-1398 or by dialing 571-272-1700. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is

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available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



CAROLYN PADEN 1761
PRIMARY EXAMINER 2-6-07